

PLANNING COMMISSION MINUTES

March 20, 2007

7:00 P.M.

Present: Chairman Clark Jenkins, Vice-Chairman Tom Smith, Ray Keller, Mark Green, Michael Allen, Kirt Peterson, City Council Representative Barbara Holt, City Prosecutor J.C. Ynchausti, City Engineer Paul Rowland, Planning Director Aric Jensen, and Recording Secretary Connie Feil.

Absent: City Attorney Russell Mahan.

Clark Jenkins welcomed all those present including City Councilman Richard Higginson before having the Planning Commission Members introduce themselves.

Michael Allen made a motion to approve the minutes for March 6, 2007 as amended. Tom Smith seconded the motion and voting was unanimous in favor.

1. Consider final commercial site plan approval for 96 S. and 108 S. Main, John Hepworth, applicant.

Fred Cox, architect, and representing John Hepworth, was present. Aric Jensen explained that Security Investment is requesting final site plan review. The project was reviewed by the Planning Commission on February 20th, at which time the Commission recommended preliminary approval.

Mr. Jensen stated that the architectural elevations, floor plans, and landscaping plans are substantially ready for final site plan approval, however, the civil site drawings still have some redlines that need to be corrected. The landscaping is very urban, with interior courtyards, pedestrian walkways, and a mix of hardscapes and softscapes. There are shallow balconies on many of the units that are more for aesthetics than they are functional.

The largest issue for this site was parking. As discussed previously, the parking requirements for this site (including the future building on 100 South) are as follows:

Residential: (27) 2 BDR units @ 2.25 stalls =	61 spaces
(27 spaces covered)	
14,800 sq ft of commercial/office @ 1 per 200 sq ft =	74 spaces
@ 1 per 300 sq ft =	50 spaces

Depending on the mix of uses, the range of parking spaces needed based strictly on the current parking requirement is between 111 and 135 stalls. Based on the current parking configuration and not including potential parking on 100 South, the project will include approximately 78

stalls. This results in about a 25% to 40% shared parking calculation. Without a shared parking analysis staff cannot determine whether or not this is sufficient parking for this site. It is the prerogative of the Planning Commission to determine the degree to which shared parking is allowed, however, staff has recommended that the applicant submit a shared parking analysis which would include calculations for existing buildings that may also use this parking area.

Fred Cox explained that the developer has chosen not to include the west building on 100 South. The decision was made to reserve this area for future parking if needed. The developer feels that there is sufficient parking for the residential use, retail and office uses. There could be a problem with the overlapping of businesses closing and residents coming and going at the same time. If this does become an issue, there is reserved space for additional parking. On site there will be specific covered parking spaces and additional reserved parking for the residents.

After a lengthy discussion the Planning Commission deemed that there was sufficient parking for this project and that a separate parking study was not necessary for the following reasons:

1. The amount of parking provided was relatively close to the actual standard.
2. The developer owns additional property that could be used to expand the parking area if necessary.
3. There is a large public parking lot across the street near Stoker School.

Staff recommended final site plan approval for the proposed mixed use development located at 78, 84, 96, 108, 140, and 144 South Main Street, with the condition that the redlined changes to the plans be made to the satisfaction of the City Engineer and City Planner prior to review by the City Council.

Kirt Peterson made a motion to recommend to the City Council final site plan approval for 78-144 S. Main subject to the condition that the redlined changes to the plans be made to the satisfaction by Staff. Michael Allen seconded the motion and voting past by majority vote. Kirt Peterson, Michael Allen, Ray Keller, Clark Jenkins, Mark Green, and Barbara Holt voting aye. Tom Smith abstained from voting.

2. Consider final multi-family site plan approval for 2773 S. 625 W., Steven Davis, applicant.

Steven Davis, applicant, was present. Aric Jensen explained that Mr. Steven Davis is requesting final site plan approval for a 4 unit, multi-family development at 2773 South 625 West. This project is being proposed as a condominium, although the applicant will submit for plat approval while the project is under construction.

The proposed site plan shows 4 townhouse style units fronting onto 625 West. The units would each have a large, single car garage and 2 parking stalls in front/to the side of the garage, for a total of 12 off-street parking stalls. The ordinance requires 2.75 stalls x 4 units which equals 11 parking stalls.

The Engineering Department conducted a traffic count which resulted in 709 vehicle trips. This is less than the maximum of 1,000 ADT allowed by ordinance for townhome projects that backout onto a public street.

Staff recommends final site plan approval with the following conditions.

1. The final building plans submitted for construction shall have at least 50% of the building exterior in brick, stone, or similar material.
2. Submit a detailed landscape plan showing the location of trees and shrub beds.
3. Pay and bond for all utilities and improvements as required for all condominium subdivisions.

There was a brief discussion regarding adjusting the outer edge of the driveways and to show the rear patios on the site plan. Tom Smith made a motion to recommend to the City Council final multi-family site plan approval for 2773 S. 625 W. subject to the conditions outlined by Staff and the addition of the following:

4. Adjust outer driveway edge and show the rear patios as indicated on redlines.

Mark Green seconded the motion and voting was unanimous in favor.

3. **PUBLIC HEARING-**Consider a variance to allow a subdivision that doesn't meet Bountiful City Ordinance, located at 485 S. 100 E. and 127 E. 500 S., Robert McArthur, applicant.

Robert McArthur, applicant, and James Dean, representing Mr. McArthur, were present. Aric Jensen explained that Robert McArthur is requesting a variance from provisions of Title 14, Chapter 5, (the Residential Multiple Family Zone), in order to create a subdivision with lots that do not meet the minimum requirements for size, width, and/or density. The property is an existing multi-family residential development located on the northeast corner of 500 South and 100 East, and is identified on the Bountiful City Zoning Map and in previous Planning Commission Minutes as 127 East 500 South.

In 2000, Mr. McArthur approached the Planning Commission with several different proposals for the development of the property. At the time there was an existing duplex and garage located on the site. The first proposal showed 3 additional units in the form of a duplex and a freestanding unit. The second iteration rearranged the location of the three new units and put the freestanding unit near 500 South. The third iteration, which was eventually constructed, contained only the existing duplex, one freestanding residential unit constructed like a single family home, and an additional 3-car garage.

Mr. McArthur and his engineers have met and spoken with City Staff several times over the past

few years in an attempt to subdivide the property into two multi-family lots, however, they were unable to design a subdivision that met the minimum requirements of the City Ordinance. Staff presented the option of subdividing the property as a condominium, which Mr. McArthur chose not to pursue. At this time Mr. McArthur is requesting a variance from the provisions of Title 14, Chapter 5, relating to lot width, size, and density, in order to subdivide the subject property.

Mr. McArthur is proposing to divide the newer home and garage from the duplex and creating two separate lots. The ordinance requires a minimum 80 ft. width for a duplex in the RM-13 Zone and the request is for 46 ft. This is substantially smaller than what the ordinance requires and will not conform to the minimum standards for a single family lot nor for a multi-family lot. The remaining piece of property with the existing home will comply with the ordinance.

Mr. Jensen explained that the requirements to grant a variance are very strict. The variance has to meet all of the following criteria to be granted.

The following is a conforming copy of Utah Code 10-9a-702, which outlines the duties of the appeal authority in relation to variances:

10-9a-702. Variances.

(1) Any person or entity desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the applicable appeal authority for a variance from the terms of the ordinance.

(2) (a) The appeal authority may grant a variance only if:

(i) literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;

(ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zone;

(iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;

(iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and

(v) the spirit of the land use ordinance is observed and substantial justice done.

(b) (i) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship unless the alleged hardship:

(A) is located on or associated with the property for which the variance is sought; and

(B) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

(ii) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not

- find an unreasonable hardship if the hardship is self-imposed or economic.
- (c) In determining whether or not there are special circumstances attached to the property under Subsection (2)(a), the appeal authority may find that special circumstances exist only if the special circumstances:
- (i) relate to the hardship complained of; and
 - (ii) deprive the property of privileges granted to other properties in the same zone.
- (3) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
- (4) Variances run with the land.
- (5) The appeal authority may not grant a use variance.
- (6) In granting a variance, the appeal authority may impose additional requirements on the applicant that will:
- (a) mitigate any harmful affects of the variance; or
 - (b) serve the purpose of the standard or requirement that is waived or modified.

In regards to Section 10-9a-707 (2)(a)(i - v), Staff's opinion is that the petitioner has not shown that he meets all of the necessary criteria such that the Commission may grant a variance. First, literal enforcement of the ordinance does not create an unreasonable hardship that is not necessary to carry out the general purpose of the zoning ordinance, i.e., the property has already been approved and developed as a multi-family development. The desire to subdivide the property in a manner contrary to the requirements of the Land Use Ordinance is not a reasonable expectation.

Second, there are no special circumstances which apply to this property that do not apply to all other properties in the subdivision. This a rectangular lot in an established neighborhood and has frontage on both 500 South and 100 East, providing more than adequate access. It is relatively flat and there are no unusual topographic features or encumbrances. Utilities are available and provided to the site. The property has already been developed with three residential units.

Third, this variance is contrary to the spirit of the Land Use Ordinance which is specifically defined in 14-1-102, *Declaration of Purpose*, "3. To provide adequate open space for light and air; to prevent overcrowding of the land."

Fourth, the desire to subdivide an existing development is a self-imposed hardship.

Lastly, "The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met." It is Staff's opinion, the applicant has not shown sufficient evidence for the Commission to grant a variance.

Staff recommends denying the request for a variance from the provisions of Title 14, Chapter 5, relating to lot width, size, and density, for the following reasons:

- 1 There is not a hardship of the land.

2. There are no special circumstances that apply to this property.
3. The proposed variance is contrary to the spirit of the Land Use Ordinance.
4. The desire to subdivide an existing development contrary to City Ordinance is a self-imposed hardship.
5. The applicant has not shown sufficient evidence that all of the conditions justifying a variance have been met.

Excerpt from Bountiful City Land Use Ordinance

14-5-103 MAXIMUM DENSITY AND MINIMUM LOT STANDARDS

Areas within the (RM) Residential Multiple Family Zone are divided into subzones based on the maximum permitted density and the minimum lot size. The maximum density is indicated by the number following the Zone designation. For example, RM-13 means Single Family Residential with a maximum of 13 units per acre on a minimum lot size of one acre. Any lot or parcel that is smaller than the minimum required lot size and that is at least one-quarter (0.25) acre in area shall have a maximum density of nine (9) units per acre, regardless of the subzone in which it is located. Density and minimum lot size are based on the net buildable area. Areas within flood plains or with slopes steeper than 30%, and/or areas that are otherwise encumbered such that they cannot be used for project improvements are considered unbuildable. In addition to the maximum density requirement, each subzone has a standard for minimum lot size and width. Any lot or parcel smaller than one-quarter (0.25) acre in size shall be developed in accordance with the standards for the (R-4) subzone.

A. Any structure and any other site improvement shall be located only upon an area constituting buildable land. In addition, each corner lot or parcel in the (RM) Zone shall meet the minimum width requirements along both frontages. Legally existing lots created prior to this ordinance and that are improved with a single family residence shall be considered legally conforming if they have a minimum 65 feet frontage and 6500 square foot lot area.

Table 14-5-103a			
<u>Subzone</u>	<u>Max. Density (Units/Acre)</u>	<u>Min. Lot Size (Net Acres)</u>	<u>Min. Lot Width (Ln Ft)</u>
RM-13	13	1.0	80
RM-19	19	1.0	90
RM-25	25	2.0	100

All subzones - less than the minimum lot size	9	0.25	80
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B. Each lot or parcel of land in the (RM) Zone shall have a minimum width, measured at the minimum front yard setback line, as set forth in this ordinance. Each lot or parcel shall also abut a public street for a minimum distance of fifty (50) feet, as measured along a line parallel to the center of the street or along the circumference of a cul-de-sac improved to City standards. For property fronting on a cul-de-sac not improved to City standards, frontage shall be calculated by measuring the linear distance between the side property lines at the tangential point of the arc.

- END OF EXCERPT -

Paul Rowland mentioned that the original proposal presented to the Planning Commission was approved based on the condition that the property would be under one ownership in order to share the density.

Robert McArthur explained that when this property was approved for multi-family it was based on that the City preferred to have a higher density of rental units in this area. Mr. McArthur's main purpose in developing his property has been to maintain the residential feel of the neighborhood. At the time of approval the community needed more rental units for young families. Mr. McArthur expressed his difficulties with obtaining financing for this property.

James Dean presented a written summary which included several attachments, which he feels support the lot split. With the summary was a signed petition in favor of the lot split by the surrounding neighbors. Mr. Dean reviewed the summary with the Commission Members.

The public hearing was opened for all those with comments or concerns.

LeeAnn Sulser, realtor, explained that for any buyer financing is difficult having a single family home and a duplex on the same property.

Larry Dupaix feels that when there are two dwellings, there should be two separate lots.

Mike Schmidt feels that separating this property into two separate lots will not change the use in any way.

Scott Bradford feels that splitting the lot will still keep the residential look of the neighborhood. Commercial businesses are creeping up 500 South and taking away the residential feel of the neighborhood. Mr. Bradford is in favor of the variance to help maintain the homes.

Fred Cox explained that, for financial reasons, it might be a possibility to use the property as a PUD. Mr. McArthur mentioned that he has tried that with the same situation, the bank will not finance the property because of the difference in value of the units. It was also mentioned that

this property does not have enough acreage to meet the ordinance.

Chris Anderson feels that all of the apartments should be torn down. He feels that if a variance is granted there will others asking for the same thing which will create more duplexes on 500 South.

Linda Miller mentioned that if the property was divided, the home and duplex would still remain residential and nothing would be changed.

Aric Jensen explained that this specific property is being considered to be rezoned Professional Office which could change this residential home to a professional office use regardless of whether the variance was approved.

J.C. Ynchausti explained to the Planning Commission that when considering a variance public clamor is not material to the decision being made. The five requirements for granting a variance are very specific and must be met in order to grant any variance. Unreasonable hardship cannot be self-imposed nor can an economic loss be considered in a decision. The hardship has to be specific to the property. Surrounding properties do not come into play and each piece of property is looked at on an individual basis. Finding of Facts and conclusions of law must be made with each requirement and sustained by the Utah Code in order to grant a variance.

Mr. Dean feels that Mr. McArthur meets the criteria required by State Law and that the neighbor's opinion should be part of the decision.

Mark Green suggested to table this item until the proposed text amendments for the Professional Office Zone is heard. Tom Smith asked if there were any foreseen consequences if granted.

Julie Bradford would like Bountiful to remain a historical town and not a parking lot for commercial.

Mont Mickelson would also like to keep this area as a historical area and keep commercial from creeping up 500 South.

The public hearing was closed without further comments.

There was a discussion in regards to complying with all five of the criteria set by State Law, listening to public concerns, the possibilities of the homes on this property being changed to Professional Office, and would the fact that granting the variance would not change the use but could open the door for future variances. There were pros and cons on the issues.

Ray Keller made a motion to deny the variance with the finding that it does not meet the five criteria required by State Law. Kirt Peterson seconded the motion and voting passed by majority vote. Ray Keller, Kirt Peterson, Clark Jenkins, Tom Smith, Michael Allen, and

Barbara Holt voting aye. Mark Green voting nay.

Chairman Clark Jenkins requested a 10 minute break at 8:25 p.m. The meeting reconvened at 8:35 p.m.

4. **PUBLIC HEARING**-Consider proposed text amendments to Title 14, the Bountiful City Land Ordinance, Professional Office Zone (Chapter 8), which has a working title of “500 South Professional Office subzone”.

Aric Jensen explained that the main purpose for creating a Professional Office Zone for 500 South is to preserve the integrity of the neighborhood and to improve traffic problem on 500 South. At the previous Planning Commission meeting Mr. Jensen handed out some proposed changes to the Professional Office Zone and asked the Commissioners to send comments so that he could prepare a draft copy.

Mr. Jensen explained that Staff doesn't want to attract retail businesses for this area. If an office user needs substantial signage then this zone is the wrong place for that user, due to the fact that they may have more of a quasi retail use. Allowing this kind of user would undermine the intent of this zone. If this zone is to blend well with residential homes and appear residential then there is no place for typical signage. There should not be internally lighted signs. Staff also has concerns with the suggested size and location of the signs. If there isn't some kind of sign showing people where to turn off the street to get to the different businesses, people may stop or drive extremely slow in the right lane of traffic as they try to locate an office/building. Something is needed that will help people driving down 500 South to easily locate the building they are going to and the location of parking for that building.

Mr. Jensen suggested opening the public hearing and to go through the draft document page by page. Upon completion, he recommended continuing the public hearing until the April 3rd meeting in case anybody wants to comment on the changes made between now and then.

Clark Jenkins suggested reviewing the draft page by page so the public could understand what was being proposed. After the Commission has had their comments, the public hearing will be opened.

There was a discussion amongst the Commission members. Mr. Jensen noted all changes, and he will present the final draft for approval on April 3rd.

The public hearing was opened for all those with comments or concerns.

Robert McArthur, residing at 485 S. 100 E., feels that a decision should be made on whether 500 South should look residential or commercial. When signage is in place, it takes away from the residential feel. If signage is allowed with or without lighting, on canopies, on the buildings or front parking, you have commercial. This area is residential and should look like it.

Scott Bradbury, residing at 148 W. 400 S., is not opposed to the Professional Office Zone if the residential look is maintained. Mr. Bradbury doesn't agree with combining the parking with two lots. He feels that each building should provide its own parking.

Chris Anderson, residing at 521 S. 200 E., feels that the speed on 500 South is too fast and should be reduced.

Mont Mickelson, 560 Brentwood Cir., has concerns regarding the adding to or extending the home vertically which destroys the view of the surrounding residents. He also has concerns with the residents using their homes for auto mechanics, dance classes, making and repairing snowboards, etc. Mr. Mickelson also feels that signage should be specific and enforced.

The public hearing was closed without further comments.

Mr. Jenkins thanked all those present for all their comments and concerns.

5. Discussion on adopting penalties for property owners converting single family homes into multi-family apartments illegally.

Aric Jensen explained that Staff has seen more and more homes being converted into apartments illegally. The property owners will build/convert the home into a duplex and then sell or rent both units. Staff would like to have a stronger ordinance with stronger penalties to help deter this practice.

The Commission members agreed with Staff. Mr. Jensen will draft a proposal and bring back before the Commission for review.

Meeting adjourned at 9:45 P.M.